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10/657,611	09/08/2003	Per Elgard Pedersen	6523.200-US	9451

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NOVO NORDISK, INC.  
INTELLECTUAL PROPERTY DEPARTMENT  
100 COLLEGE ROAD WEST  
PRINCETON, NJ 08540

EXAMINER
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CAMPBELL, VICTORIA P

ART UNIT	PAPER NUMBER
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3763

NOTIFICATION DATE	DELIVERY MODE
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06/27/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### **DETAILED ACTION**

This is the second Office Action based on the 10/657611 application filed September 8, 2003. Claims 1-5 and 8 as amended are currently pending and considered below.

#### ***Claim Objections***

1. Claim 4 is objected to because of the following informalities: "A flow restrictor as defined in any of claims 1" is improper grammar. Appropriate correction is required.
2. Claim 8 objected to because of the following informalities: as amended the claim currently reads "A flow restrictor as defined in claim claim 1" but should read -- A flow restrictor as defined in claim 1 --. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,935,430 to Craig. Regarding the instant claims, Craig teaches the following:
  1. A flow restrictor (Fig. 5, #312) comprising: a flow channel (Fig. 5, #334A and #334B) formed between at least a first member (Fig. 5, #314) and a second member (Fig. 5, #316) arranged in engagement with each other (Col. 11, lines 46-52), the flow channel having an inlet end portion in fluid communication with

an inlet opening and an outlet end portion in fluid communication with an outlet opening (Fig. 5, apertures #338; Col. 10, lines 60-67), the flow channel comprising a generally U-formed portion with a pair of opposed first and second channel portions (Fig. 5, #334A and #334B; examiner interprets the end portion of a channel midway down Figure 5 on the right hand side to be connected to the portion of channel labeled by call-out #334B, thus making a U-shaped channel), and a safety channel arranged between the opposed first and second channel portions (Fig. 5, #321A and #321B), the safety channel comprising an end portion in fluid communication with an exterior space relative to the flow restrictor (no end portion of any of the embodiments in Figures 1-5 is shown; examiner interprets moats #321A and #321B to be open to the exterior, see also col. 10, lines 38-43).

**2.** A flow restrictor as defined in claim 1, comprising a plurality of generally U-formed portions, each with a pair of opposed first and second channel portions (Fig. 5; more than one U-shaped channel is shown; additionally, Col. 10, lines 31-33 suggest that a serpentine path, which is widely accepted to be a series of U-shaped portions, could be used).

**3.** A flow restrictor as defined in claim 2, comprising a plurality of safety channels arranged between at least a portion of the opposed first and second channel portions (Fig. 5, #321A and #321B; Col. 11, lines 59-61 describe that the safety channel is adjacent to the first and second channel portions, therefore, examiner believes this would apply to singular and multiple channel portions).

4. A flow restrictor as defined in any of claim 1, wherein: the first member (Fig. 5, #314) comprises a first surface portion (Fig. 5, surface on which channels are etched) and the second member (Fig. 5, #316) comprises a second surface portion (Fig. 5, surface on which channels are etched), the first and second surface portions being arranged in opposed engagement with each other (Fig. 5, substrate #312 will be folded at #332 to place #314 in engagement with #316), and wherein traces are formed in at least one of the first and second surface portions (Fig. 5, #334A, #334B, #321A, and #321B), the traces in combination with an opposed surface portion forming the flow channel and the safety channel(s).

5. A flow restrictor as defined in claim 4, wherein the surface traces are formed in one of the first and second surface portions (Fig. 4, surface #110A lacks the traces (shown as #121 and #114 in Fig. 3) to oppose traces #123 and #116 on surface #112; Col. 11, lines 40-45).

8. A flow restrictor as defined in claim claim 1, wherein the inlet and outlet openings are formed in the first and/or second member (Fig. 5, apertures #338; Col. 10, lines 60-67).

### ***Response to Arguments***

5. Applicant's arguments filed May 9, 2008 have been fully considered but they are not persuasive.

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6. In response to applicant's argument that the purpose of the moats disclosed by the prior art is different from that of the safety channels of the instant invention, the examiner respectfully disagrees. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

7. Regarding applicant's argument that Craig does not teach apertures that connect the moat channels to the exterior, the examiner respectfully disagrees. Craig, in Column 10, lines 38-43 states that a variety of apertures or ports maybe in fluid communication with one or more of the channels or other surface features. The examiner interprets "other surface features" to encompass all alterations made to the surface of the substrate prior to folding, which includes, but is not limited to, the moat channel structures.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTORIA P. CAMPBELL whose telephone number is (571)270-5035. The examiner can normally be reached on Monday-Thursday, 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victoria P Campbell  
Examiner, AU 3763

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/Nicholas D Lucchesi/

Supervisory Patent Examiner, Art Unit 3763